

1 Aqua Terra Aeris (ATA) Law Group  
2 MATTHEW C. MACLEAR, SBN 209228  
3 ANTHONY M. BARNES, SBN 199048  
4 828 San Pablo Avenue, Suite 115B  
Albany, CA 94706  
Telephone: (415) 568 5200  
E-mail: [mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)

5 **Attorneys for Plaintiff**  
6 *Center for Advanced Public Awareness, Inc.*  
7 *("CAPA")*

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**06/21/2017**  
**nzeyaad**  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2017-00214464**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10 **CENTER FOR ADVANCED PUBLIC**  
11 **AWARENESS, INC.,** a non-profit  
12 California corporation,

13 Plaintiff,

14 vs.

15 **C9 ALLIANCE COOPERATIVE, INC.,**  
16 **doing business as CLOUD 9; and DOES**  
17 **1-25, inclusive,**

18 Defendant.

No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES**  
**AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

BY FAX

18 Plaintiff Center for Advanced Public Awareness, Inc. ("PLAINTIFF" or "CAPA") brings  
19 this action in the interest of the general public, and on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendants C9 ALLIANCE  
22 COOPERATIVE, INC., doing business as Cloud 9 ("Cloud 9") and DOES 1-25 (hereinafter  
23 individually referred to as "DEFENDANT" or collectively as "DEFENDANTS") to warn  
24 consumers in California that they are being exposed to marijuana smoke, a chemical known to the  
25 State of California to cause cancer. According to the Safe Drinking Water and Toxic Enforcement  
26 Act of 1986, Health and Safety Code ("H&S Code"), section 25249.5 *et seq.* (also known as and  
27 referred to hereinafter as "Proposition 65"), businesses must provide persons with a "clear and  
28 reasonable warning" before exposing individuals to chemicals known to the State to cause cancer

1 or reproductive harm. Marijuana smoke is referred to hereinafter as the "LISTED CHEMICAL."<sup>1</sup>

2 2. DEFENDANTS manufacture, package, distribute, market, and/or sell in California  
3 products containing marijuana intended for smoking, including, but not limited to, pre-rolled  
4 products, unprocessed and processed marijuana intended to be heated, combusted, then inhaled,  
5 and specifically, the flowers, leaves, and other organic parts of marijuana plants ("SUBJECT  
6 PRODUCTS"), the consumption and use of which result in exposure to the LISTED CHEMICAL  
7 that require a "clear and reasonable" warning under Proposition 65. DEFENDANTS exposed  
8 consumers, users and patients to the LISTED CHEMICAL and have failed to provide the health  
9 hazard warnings required under Proposition 65.

10 3. DEFENDANTS continue manufacturing, packaging, distributing, marketing  
11 and/or sales of the SUBJECT PRODUCTS without the required health hazard warnings, which  
12 causes or threatens to cause, individuals to be involuntarily, unknowingly, and unwittingly  
13 exposed to the LISTED CHEMICAL in violation of Proposition 65, and subjects DEFENDANTS  
14 to injunctive relief for such conduct as well as civil penalties for each violation. (H&S Code  
15 § 25249.7, subds. (a), (b)(1).)

#### 16 PARTIES

17 4. PLAINTIFF is a non-profit public benefit corporation organized under California  
18 law. CAPA is dedicated to, among other causes, providing information to consumers regarding  
19 the hazards of toxins in products; protecting public health and drinking water sources by  
20 preventing pollution and toxics from being discharged, released or emitted into the environment;  
21 and enforcing state and federal environmental laws and regulations through citizen suits.

22 5. CAPA is a person within the meaning of H&S Code, section 25249.11 and brings  
23

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24 <sup>1</sup> Many of the chemical constituents that have been identified in marijuana smoke are carcinogens. The following 33  
25 marijuana smoke constituents . . . are listed under Proposition 65 as causing cancer: acetaldehyde, acetamide,  
26 acrylonitrile, 4-aminobiphenyl, arsenic, benz[a]anthracene, benzene, benzo[a]pyrene, benzo[b]fluoranthene,  
27 benzo[j]fluoranthene, benzo[k]fluoranthene, benzofuran, 1,3-butadiene, cadmium, carbazole, catechol, chromium  
28 (hexavalent compounds), chrysene, dibenz[a,h]anthracene, dibenz[a,i]pyrene, dibenzo[a,e]pyrene,  
diethylnitrosamine, dimethylnitrosamine, formaldehyde, indeno[1,2,3,- c,d]pyrene, isoprene, lead, mercury, 5-  
methylchrysene, naphthalene, nickel, pyridine, and quinoline. (Evidence on the Carcinogenicity of Marijuana Smoke,  
Office of Environmental Health Hazard Assessment, Reproductive and Cancer Hazard Assessment Branch, March,  
2009 at 5.)

1 this enforcement action in the public interest pursuant to H&S Code, section 25249.7, subdivision  
2 (d). H&S Code, section 25249.7, subdivision (d) specifies that actions to enforce Proposition 65  
3 may be brought by a person in the public interest, provided certain notice requirements are met  
4 and no other public prosecutor is diligently prosecuting an action for the same violation(s).

5 6. C9 ALLIANCE COOPERATIVE, INC. is now, and was at all times relevant  
6 herein, a non-profit corporation organized under the laws of California and is doing business  
7 within the meaning of H&S Code, section 25249.11 at 5711 Florin Perkins Road #A, Sacramento,  
8 California 95828.

9 7. DEFENDANTS manufacture, package, distribute, market, sell in and/or offer the  
10 SUBJECT PRODUCTS for sale or use in the State of California or imply by their conduct that  
11 they manufacture, distribute, and/or offer the SUBJECT PRODUCTS for sale or use in the State  
12 of California (including but not limited to Sacramento County), which contain the LISTED  
13 CHEMICAL without first giving "clear and reasonable" warnings.

14 8. DEFENDANTS, separately and each of them, are or were, at all times relevant to  
15 the claims in this Complaint and continuing through the present, legally responsible for  
16 compliance with the provisions of Proposition 65. Whenever an allegation regarding any act of a  
17 DEFENDANTS is made herein, such allegation shall be deemed to mean that DEFENDANTS, or  
18 their agent, officer, director, manager, supervisor, or employee did, or so authorized, such acts  
19 while engaged in the affairs of DEFENDANTS' business operations and/or while acting within  
20 the course and scope of their employment or while conducting business for DEFENDANT(S) for  
21 a commercial, nonprofit or medical purpose.

22 9. In this Complaint, when reference is made to any act of a DEFENDANT, such  
23 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or  
24 representatives of a DEFENDANT acted or authorized such actions, and/or negligently failed and  
25 omitted to act or adequately and properly supervise, control or direct its employees and agents  
26 while engaged in the management, direction, operation or control of the affairs of the business  
27 organization. Whenever reference is made to any act of any DEFENDANT, such allegation shall  
28

1 be deemed to mean the act of each DEFENDANT acting individually, jointly, and severally as  
2 defined by Civil Code, section 1430 *et seq.*

3 10. PLAINTIFF does not know the true names, capacities and liabilities of  
4 DEFENDANTS DOES Nos. 1-25, inclusive, and therefore sues them under fictitious names.  
5 PLAINTIFF will amend this Complaint to allege the true name and capacities of the DOE  
6 Defendants upon being ascertained. Each of these Defendants was in some way legally  
7 responsible for the acts, omissions, and/or violations alleged herein.

### 8 JURISDICTION AND VENUE

9 11. Venue is proper in the Sacramento County Superior Court, pursuant to Code of  
10 Civil Procedure, sections 393, 395, and 395.5, because this Court is a court of competent  
11 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to occur,  
12 in Sacramento County, and because DEFENDANTS conducted, and continue to conduct,  
13 business in this County with respect to the SUBJECT PRODUCTS.

14 12. This Court has jurisdiction over this action pursuant to California Constitution  
15 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except  
16 those given by statute to other trial courts." The statute under which this action is brought does  
17 not specify any other court with jurisdiction.

18 13. This Court has jurisdiction over DEFENDANTS because they are business entities  
19 that do sufficient business, have sufficient minimum contacts in California or otherwise  
20 intentionally avail themselves of the California market, through the sale, marketing and use of  
21 their SUBJECT PRODUCTS in California, to render the exercise of jurisdiction over them by the  
22 California courts consistent with traditional notions of fair play and substantial justice.

23 14. Venue in this action is proper in the Sacramento County Superior Court because  
24 the cause, or part thereof, arises in Sacramento County since DEFENDANTS' violations occurred  
25 (products are marketed, offered for sale, sold, used, and/or consumed without clear and  
26 reasonable warnings) in this County.

### 27 STATUTORY BACKGROUND

1           15.    The people of the State of California declared in Proposition 65 their right “[t]o be  
2 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
3 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

4           16.    To effect this goal, Proposition 65 requires that individuals be provided with a  
5 “clear and reasonable warning” before being exposed to substances listed by the State of  
6 California as causing cancer or reproductive toxicity. H&S Code, section 25249.6 states, in  
7 pertinent part:

8           No person in the course of doing business shall knowingly and intentionally expose  
9 any individual to a chemical known to the state to cause cancer or reproductive  
toxicity without first giving clear and reasonable warning to such individual . . .

10          17.    An exposure to a chemical in a consumer product is one “which results from a  
11 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
12 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code  
13 Regs., tit. 22, § 12601, subd. (b).) H&S Code, section 25603, subdivision (c) states that “a person  
14 in the course of doing business . . . shall provide a warning to any person to whom the product is  
15 sold or transferred unless the product is packaged or labeled with a clear and reasonable  
16 warning.”

17          18.    Pursuant to H&S Code, section 25603.1:

18           The warning may be provided by using one or more of the following methods singly  
19 or in combination:

20           (a) A warning that appears on a product’s label or other labeling.

21           (b) Identification of the product at the retail outlet in a manner which provides a  
22 warning. Identification may be through shelf labeling, signs, menus, or a  
combination thereof.

23           (c) The warnings provided pursuant to subparagraphs (a) and (b) shall be  
24 prominently placed upon a product’s label or other labeling or displayed at the retail  
25 outlet with such conspicuousness, as compared with other words, statements,  
26 designs, or devices in the label, labeling or display as to render it likely to be read  
and understood by an ordinary individual under customary conditions of purchase  
or use.

27           (d) A system of signs, public advertising identifying the system and toll-free  
28

1 information services, or any other system that provides clear and reasonable  
2 warnings.

3 19. Proposition 65 provides that any “person who violates or threatens to violate” the  
4 statute may be enjoined in a court of competent jurisdiction. (H&S Code, § 25249.7.) The phrase  
5 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
6 probability that a violation will occur” (H&S Code, § 25249.11, subd. (e).) Violators are liable for  
7 civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code, § 25249.7.)

### 8 **FACTUAL BACKGROUND**

9 20. On December 12, 2007, the Office of Environmental Health Hazard Assessment  
10 (OEHHA) announced the selection of marijuana smoke as a chemical for consideration for listing  
11 by the Carcinogen Identification Committee (CIC) in the *California Regulatory Register*. The  
12 CIC subsequently determined that marijuana smoke has been clearly shown, through  
13 scientifically valid testing according to general accepted principles, to cause cancer.  
14 Consequently, on June 19, 2009, marijuana smoke was added to the Proposition 65 list, pursuant  
15 to California Code of Regulations, section 25305, subdivision (a)(1) (formerly Title 22, California  
16 Code of Regulations, section 12305, subdivision (a)(1)). In summary, marijuana smoke was listed  
17 under Proposition 65 as known to the State to cause cancer.

18 21. The consumer exposures that are the subject of this Complaint result from the  
19 combustion and inhalation of the SUBJECT PRODUCTS resulting in exposure to the LISTED  
20 CHEMICAL, to wit – marijuana smoke. Consequently, a primary route of exposure to the  
21 LISTED CHEMICAL contained in marijuana is through direct smoking of the marijuana leaves,  
22 flowers, and stems or pre-rolled products.

23 22. DEFENDANTS have manufactured, grown, processed, marketed, distributed,  
24 offered to sell and/or sold the SUBJECT PRODUCTS for use and consumption by  
25 inhalation/smoking in California since at least January 20, 2016. The SUBJECT PRODUCTS  
26 continue to be distributed and sold in California without the requisite warning information.

27 23. At all times relevant to this action, DEFENDANTS, therefore, have knowingly  
28

1 and intentionally exposed the users, consumers and/or patients to the SUBJECT PRODUCTS and  
2 the LISTED CHEMICAL without first giving a clear and reasonable warning(s) to such  
3 individuals.

4 24. As a proximate result of acts by DEFENDANTS, as persons in the course of doing  
5 business within the meaning of H&S Code, section 25249.11, individuals throughout the State of  
6 California, including in Sacramento County, have been exposed to the LISTED CHEMICAL  
7 without a clear and reasonable warning on the SUBJECT PRODUCTS. The individuals subject to  
8 the violative exposures include normal and foreseeable users, consumers and patients of the  
9 SUBJECT PRODUCTS, as well as all others exposed to the SUBJECT PRODUCTS.

10 25. On January 20, 2017 CAPA served CLOUD 9 and each of the appropriate public  
11 enforcement agencies with a document entitled "Notice of Violations of California Health &  
12 Safety Code Section 25249.5" that provided CLOUD 9 and the public enforcement agencies with  
13 notice that CLOUD 9 was in violation of Proposition 65 for failing to warn purchasers and  
14 individuals using the SUBJECT PRODUCTS that the use of the SUBJECT PRODUCTS exposes  
15 them to marijuana smoke, a chemical known to the State of California to cause cancer ("Prop. 65  
16 Notice"). A true and correct copy of the 60-Day Notice ("NOTICE") is attached hereto as  
17 **Exhibit A** and is hereby incorporated by reference, and is available on the Attorney General's  
18 website located at <http://oag.ca.gov/prop65>.

19 26. The NOTICE was issued pursuant to, and in compliance with, the requirements of  
20 H&S Code, section 25249.7, subdivision (d) and the statute's implementing regulations regarding  
21 the notice of the violations to be given to certain public enforcement agencies and to the violator.  
22 The NOTICE included, *inter alia*, the following information: the name, address, and telephone  
23 number of the noticing individual; the name of the alleged violator; the statute violated; the  
24 approximate time period during which violations occurred; and descriptions of the violations  
25 including the chemicals involved, the routes of toxic exposure, and the specific product or type of  
26 product causing the violations.

27 27. CLOUD 9 was also provided copies of the document entitled "The Safe Drinking  
28

1 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known  
2 as Appendix A to Title 27 of CCR, section 25903, via Certified Mail.

3 28. The California Attorney General was provided a copy of the NOTICE and a  
4 Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and  
5 meritorious case for this action, and attaching factual information sufficient to establish a basis  
6 for the certificate, including the identity of the persons consulted with and relied on by the  
7 certifier, and the facts or other data reviewed by those persons, pursuant to H&S Code, section  
8 25249.7, subdivision (h)(2) via online submission.

9 29. After expiration of the sixty (60) day notice period, the appropriate public  
10 enforcement agencies have failed to commence and diligently prosecute a cause of action under  
11 H&S Code, section 25249.5, *et seq.* against CLOUD 9 based on the allegations herein.

12 30. The Parties entered into agreements tolling the statute of limitations for the  
13 purpose of trying to resolve the matter prior to litigation. The tolling period extended the statute  
14 of limitations from March 23, 2017 through June 19, 2017. Pursuant to these agreements, any  
15 statute(s) of limitation for any claims PLAINTIFF may have had related to the NOTICE was  
16 tolled and extended as to PLAINTIFF and will not be included in computing the time applicable  
17 to the cause of action brought against Defendants based on claims covered by the tolling  
18 agreements. Those claims include the claims alleged in this action against Defendants.

19 31. Based on information and belief, CLOUD 9 has sold multiple strains of buds,  
20 flowers and pre-rolled marijuana/cannabis products intended for combustion and inhalation by  
21 doctor-recommended “patients” without giving clear and reasonable warnings that medical  
22 cannabis can cause cancer. CLOUD 9 has sold dozens, if not hundreds, of units of SUBJECT  
23 PRODUCT to a PERSON<sup>2</sup> in the State of California during each and every month from January  
24 20, 2016 through the present, amounting to numerous violative products sold in that period.

25  
26  
27 <sup>2</sup> “PERSON” includes a natural person, firm, association, organization, partnership, business, trust, corporation,  
28 public entity, joint venture, and any other incorporated or unincorporated association, business or enterprise.

1 **Basis for Injunctive Relief for Violations of Health and Safety Code, section 25249.5, et seq.**  
2 **concerning the SUBJECT PRODUCTS described in the January 20, 2017 Prop. 65 Notice**  
3 **of Violation Against DEFENDANTS**

4 32. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 31,  
5 inclusive, as if specifically set forth herein

6 33. By committing the acts alleged in this Complaint, DEFENDANTS at all times  
7 relevant to this action, and continuing through the present, have violated, or threaten to violate,  
8 H&S Code, section 25249.6 by, in the course of doing business, knowingly and intentionally  
9 exposing individuals in California to a chemical known to the State of California to cause cancer  
10 without first giving "clear and reasonable" warnings to such persons/patients who use or consume  
11 the SUBJECT PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code,  
12 sections 25249.6 and 25249.11, subdivision (f).

13 34. By committing the acts alleged in this Complaint, DEFENDANTS have caused or  
14 threaten to cause irreparable harm for which there is no plain, speedy, or adequate remedy at law.  
15 In the absence of equitable relief, DEFENDANTS will continue to create a substantial risk of  
16 irreparable injury by continuing to cause patients and consumers to be involuntarily and  
17 unwittingly exposed to cancer-causing marijuana smoke through the foreseeable and/or intended  
18 use and/or consumption of the SUBJECT PRODUCTS.

19 35. By the above-described acts, DEFENDANTS have violated, or threaten to violate,  
20 H&S Code, section 25249.6 and are therefore subject to preliminary and permanent injunctions  
21 ordering DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and  
22 future patients and customers, and possibly be required to provide warnings to DEFENDANTS'  
23 past customers who purchased or used the SUBJECT PRODUCTS without receiving a clear and  
24 reasonable warning.

25 36. An action for injunctive relief under Proposition 65 is specifically authorized by  
26 H&S Code, section 25249.7, subdivision (a).

27 37. Continuing commission by DEFENDANTS of the acts alleged above will  
28 irreparably harm the citizens of the State of California, for which harm they have no plain,

1 speedy, or adequate remedy at law.

2 38. In the absence of preliminary and then permanent injunctive relief,  
3 DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to  
4 cause patients, users and/or consumers to be involuntarily, unknowingly and unwittingly exposed  
5 to the LISTED CHEMICAL through the use, consumption and/or handling of the SUBJECT  
6 PRODUCTS.

7 **FIRST CAUSE OF ACTION**

8 **(Civil Penalties for Violations of Health and Safety Code, section 25249.5, et seq.  
9 concerning the SUBJECT PRODUCTS described in the January 20, 2017, Prop. 65 Notice  
of Violation Against DEFENDANTS)**

10 39. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 38,  
11 inclusive, as if specifically set forth herein.

12 40. By committing the acts alleged in this Complaint, DEFENDANTS at all times  
13 relevant to this action, and continuing through the present, have violated, continue to violation  
14 and threaten to violate H&S Code, section 25249.6 by, in the course of doing business, knowingly  
15 and intentionally exposing individuals in California to a chemical known to the State of  
16 California to cause cancer, to wit – marijuana smoke, without first giving clear and reasonable  
17 warnings to such persons who use, consume and/or inhale the SUBJECT PRODUCTS containing  
18 the LISTED CHEMICAL, pursuant to H&S Code, sections 25249.6 and 25249.11, subdivision  
19 (f).

20 41. For each knowing and intentional unwarned exposure discovered within  
21 limitations period, exclusive of any applicable tolling periods, DEFENDANTS are liable,  
22 pursuant to H&S Code, section 25249.7, subdivision (b), for a civil penalty of up to \$2,500 per  
23 day per violation for each unlawful exposure to the LISTED CHEMICALS from the SUBJECT  
24 PRODUCTS, according to proof.

25 **PRAYER FOR RELIEF**

26 Wherefore, PLAINTIFF prays for the following relief:

27 A. A preliminary and permanent injunction, pursuant to H&S Code, section 25249.7,  
28

1 subdivision (b), enjoining DEFENDANTS, their agents, employees, assigns and all persons  
2 acting in concert or participating with DEFENDANTS, from manufacturing, distributing,  
3 marketing, processing, selling or offering to sell the SUBJECT PRODUCTS to patients or  
4 consumers in California without first providing a "clear and reasonable warning" regarding the  
5 LISTED CHEMICAL within the meaning of Proposition 65;

6 B. An injunctive order, pursuant to H&S Code, section 25249.7, subdivision (b) and  
7 California Code of Regulations, title 27, sections 25603 and 25603.1, compelling  
8 DEFENDANTS to provide "clear and reasonable" warnings on the labels of the SUBJECT  
9 PRODUCTS; or a combination of warnings at the entrance to DEFENDANTS' medical  
10 marijuana facility; on DEFENDANTS' website; inside DEFENDANTS' membership  
11 agreement; at the point of sale; inside display cases; at concerts and conventions that  
12 DEFENDANTS participate in; and/or on pamphlet for SUBJECT PRODUCTS that are delivered  
13 to consumers. The warnings should indicate that the SUBJECT PRODUCTS will expose the  
14 user, consumer or patient to chemicals known to the State of California to cause cancer;

15 C. An assessment of civil penalties pursuant to H&S Code, section 25249.7,  
16 subdivision (b), against DEFENDANTS in the amount of up to \$2,500 per day for each violation  
17 of Proposition 65, according to proof;

18 D. An award to PLAINTIFF of its reasonable attorneys' fees and costs of suit  
19 pursuant to California Code of Civil Procedure, sections 1032 *et. seq* and 1021.5, according to  
20 proof; and

21 E. Such other and further relief as may be just and proper.

22  
23 DATED: June 20, 2017

AQUA TERRA AERIS LAW GROUP

24  
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26  
27 Matthew C. Maclear  
28 Attorneys for Plaintiff  
Center for Advanced Public Awareness, Inc.

# **EXHIBIT A**



Matthew M. Maclear  
mcm@atalawgroup.com  
415.568.5200

January 20, 2017

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

ATA Law Group represents the Center for Advanced Public Awareness, Inc. ("CAPA"), 180 Promenade Circle, Suite 300, Sacramento, CA 95834; CAPA is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, fostering and increasing the public awareness of chemicals used to manufacture consumer products, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CAPA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product(s) identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual . . ." Without proper warnings regarding the toxic effects of exposures to this listed chemical(s) that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical(s) from the reasonably foreseeable use of the product.

This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), CAPA intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**Certificate of Merit and General Information about Proposition 65.** Pursuant to Title 11 C.C.R. § 3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**C9 Alliance Cooperative, Inc., doing business as Cloud 9**  
5711 Florin Perkins Road, #A  
Sacramento, CA 95828



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2017

**Consumer Products and Listed Chemical.** All the medical marijuana “flowers” or “buds” sold to California residents by Violators are the subject of this Notice and Violators failed to clearly and reasonably warn consumers that Marijuana Smoke<sup>1</sup> is a chemical known to the State of California to cause cancer.

One June 19, 2009, the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency added marijuana smoke to the Proposition 65 list.

OEHHA announced the selection of marijuana smoke as a chemical for consideration for listing by the Carcinogen Identification Committee (CIC) in the *California Regulatory Notice Register* on December 12, 2007, subsequent to consultation with the CIC at their November 19, 2007 meeting. The CIC determined that marijuana smoke was clearly shown, through scientifically valid testing according to generally accepted principles, to cause cancer. Consequently, marijuana smoke was added to the Proposition 65 list, pursuant to Title 27, California Code of Regulations, section 25305(a)(1) (formerly Title 22, California Code of Regulations, section 12305(a)(1)).

In summary, marijuana smoke was listed under Proposition 65 as known to the State to cause cancer:

Chemical	CAS No.	Toxicological Endpoint	Listing Mechanism
Marijuana smoke <sup>2</sup>	--	Cancer	State’s qualified experts

**Violations.** The alleged Violator knowingly and intentionally has exposed and continues to knowingly and intentionally expose consumers within the State of California to marijuana smoke without providing clear and reasonable warning of this exposure. In particular, the products do not warn that they contain chemicals known to the State of California to cause cancer.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the combustion and inhalation of the products. Consequently, a primary route of exposure to the chemicals contained in marijuana is through direct smoking of the marijuana leaves, flowers, and stems.

**Approximate Time of Violations.** Ongoing violations have occurred every day since at least January 20, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65

<sup>1</sup> Many of the chemical constituents that have been identified in marijuana smoke are carcinogens. The following 33 marijuana smoke constituents are listed under Proposition 65 as causing cancer: acetaldehyde, acetamide, acrylonitrile, 4-aminobiphenyl, arsenic, benz[a]anthracene, benzene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, benzofuran, 1,3-butadiene, cadmium, carbazole, catechol, chromium (hexavalent compounds), chrysene, dibenz[a,h]anthracene, dibenz[a,i]pyrene, dibenzo[a,e]pyrene, diethylnitrosamine, dimethylnitrosamine, formaldehyde, indeno[1,2,3- c,d]pyrene, isoprene, lead, mercury, 5-methylchrysene, naphthalene, nickel, pyridine, and quinoline.

<sup>2</sup> *Marijuana Smoke Listed Effective June 19, 2009 as Known to the State of California to Cause Cancer*, Office of Environmental Health Hazard Assessment, June 19, 2009, available at: <http://oehha.ca.gov/proposition-65/cmr/marijuana-smoke-listed-effective-june-19-2009-known-state-california-cause> (last visited: Dec. 27, 2016).



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2017

because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CAPA is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 for products sold in the future. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

CAPA has retained Aqua Terra Aeris (ATA) Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated herein.**

Dated: January 20, 2017

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew C. Maclear", is written over a horizontal line.

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for Center for Advanced Public  
Awareness

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to C9 Alliance Cooperative, Inc., doing business as Cloud 9)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2017

**CERTIFICATE OF MERIT**

**Re: Center for Advanced Public Awareness, Inc.'s Notice of Proposition 65 Violations by C9 Alliance Cooperative, Inc., doing business as Cloud 9**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 20, 2017

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for Center for Advanced Public  
Awareness



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2017

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 828 San Pablo Avenue, Albany, CA 94706. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at in Albany, California.

On January 20, 2017, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Gevorg George Kadzhikyan or Current President / CEO  
C9 Alliance Cooperative, Inc., doing business as Cloud 9  
5711 Florin Perkins Road, #A  
Sacramento, CA 95828

Gevorg George Kadzhikyan or Current Agent for Service of Process  
C9 Alliance Cooperative, Inc., doing business as Cloud 9  
5711 Florin Perkins Road, #A  
Sacramento, CA 95828

On January 20, 2017, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
January 20, 2017

On January 20, 2017, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814  
EPU@da.sccgov.org

On January 20, 2017, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List below by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by US First Class Mail.

Executed on January 20, 2017, in Albany,  
California.

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Matthew Maclear

**SERVICE LIST**

Office of the City Attorney  
915 I Street, 4th Floor  
Sacramento, CA 95814-2608

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GDSEC COURTHOUSE  
SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY